IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.19 OF 2005

IN

ARBITRATION APPEAL(STAMP) NO.24481 OF 2005

M/s.Gandhi and Sons through its proprietor Bipin M.Gandhi. ...Applicant.

Versus

Principal Director & others. ...Respondents.

Mr.Jayadeep Pawar, for Applicant.

CORAM: D.K.DESHMUKH,J.

DATED: 26th October, 2005.

P.C.:-

1. This is a Civil Application filed for condonation of delay in filing an Arbitration Petition/Appeal. Perusal of the Arbitration Petition/Appeal shows that it has been filed under Section 34 of the Arbitration and Conciliation Act,1996. The facts that have been

narrated in the Civil Application reveal that according to the applicant the Award which is challenged in the petition/appeal filed under Section 34 of the Act was passed on 28.7.2003. According to the applicant, the applicant has received copy of that Award on 31.7.2003. According to the averments made in paragraph no.8 of of this Civil Application, the limitation for filing a petition under Section 34 of the Arbitration & Conciliation Act,1996, challenging the Award was upto 29.10.2003. According to the applicant, due to incorrect advise instead of filing petition under section 34 of the Arbitration and Conciliation Act,1996 challenging the Award, he filed Writ Petition no.9415 of 2003 on 5.12.2003. According to the Applicant, he has filed this petition/appeal under Section 34 of the Arbitration and Conciliation Act,1996. According to Section 34 of the Arbitration and Conciliation Act,1996, a petition challenging the Award can be filed within a period of three months from the date on which the Award has been received. According to the applicant, he has received the Award on 31.7.2003. Therefore, the period of three months provided by the Arbitration and Conciliation Act,1996 for filing petition under Section 34 of the Act came to an end on 1.11.2003. According to the provisions of Section 34 of the Act, Court can condone delay of maximum period of 30 days in filing the petition. That period of 30 days came to an end on 1.12.2003. Thus, on 2.12.2003 petitioner lost the remedy because of expiry of period of limitation for challenging the Award. Therefore, the fact that

the petitioner filed a Writ Petition instead of Petition under Section 34 of the Arbitration and Conciliation Act on 5.12.2003, is irrelevant for the purpose of considering this Civil application for condonation of delay. But in my opinion, the facts narrated by the applicant himself in this application regarding filing of Writ Petition are to be referred to show how callous and careless the applicant has been. In paragraph no.6 of this application, the applicant stated thus:-

> "6. The Applicant submits the Advocate who has filed earlier writ petition and appeared before the Arbitrator has advised him to file writ petition in this Hon'ble Court. The Applicant entrusted the said work to him. The Applicant submits that Advocate engaged by the Applicant inadvertently filed W.P. being No.9415/2003 in this Hon'ble Court challenging the Award. The Applicant was not aware of the fact that the Advocate who has filed the said writ petition and was looking after the same left the practice and joined the service hence he has not filed his vakalatnama and petition was presented in person."

From what is quoted above, one can infer that the Writ Petition was filed by the petitioner in person and not through a Lawyer. When the petition is filed in person, it means that the petitioner himself has filed the petition then one does not know how he says that he was not aware that the Advocate has not filed vakalatnama. It appears that the Writ Petition filed by the petitioner was dismissed for default. Thereafter, it was restored to the file and after it was restored, it was withdrawn by the petitioner on 16.8.2005. Even, thereafter, this petition was not filed immediately and it was filed on 7.10.2005. It is clear that the applicant was totally negligent and careless in prosecuting the Writ Petition that was filed in this Court.

2. This petition/appeal has been filed on the Appellate Side of this Court. A petition under Section 34 of the Arbitration and Conciliation Act,1996 can be filed before the Court as defined by the Arbitration and Conciliation Act,1996. As per the definition of term "Court" found in the Arbitration and Conciliation Act, the principal Civil Court of original jurisdiction in a District is the Court which can entertain a petition under Section 34 of the Arbitration and Conciliation Act,1996. In paragraph 3 of the Petition/Appeal, the petitioner has stated thus:-

"3. This Hon'ble Court has jurisdiction to

> entertain and try this Appeal, as whole cause of action has arisen in Nashik District, parties reside in Nashik District, and the impugned arbitration award has been passed in Nashik."

If the Award has been passed in Nashik District and the cause of action has arisen in Nashik District, the appropriate Court for filing petition under section 34 of the Arbitration and Conciliation Act,1996 would be the Court of original Civil Jurisdiction in Nashik and not the Appellate side of Bombay High Court. In the title of the petition/Appeal, the Petitioner describe this petition/appeal as petition under Section 34 of the Arbitration and Conciliation Act,1996. Whereas the averments in the petition/appeal show that it is an appeal and not petition. I am pointing out these facts though they are not strictly relevant, to show that the applicant is casual and negligent in choosing, adopting and prosecuting his remedy. The learned Counsel who had argued the petition/appeal in the Court was not in a position to state even the provisions of Law under which the main petition/appeal has been filed and the provisions of Law under which this Civil Application has been filed. He was not in a position to state as to how this Court on the Appellate Side is the appropriate Court for filing this petition. In short the casual attitude of the petitioner continued even at the stage of argument of Civil Application. Hence, the Civil Application is rejected.